

1. PARTIES AND INTERPRETATION

- 1.1 These Conditions set out the basis on which DX Network Services Limited (05026914) whose registered office is at Ditton Park, Riding Court Road, Datchet, SL3 9GL (“DX”) transports goods collected by DX which may be either a single item tendered for carriage (a “Package”) or a consignment of Packages from a single address under a single reference number for delivery to a single address (“Consignment”), in each case to be delivered to a recipient or any other person with authority at the delivery address, or, if residential, at neighbouring premises (“Recipient”). The Customer as defined in the Service Agreement (“Customer”) should note the limitations and exclusions of DX’s liability and arrange insurance as necessary.
- 1.2 In these Conditions the words “including”, “in particular” and similar shall be construed as illustrative and not exhaustive.

2. FORMATION OF CONTRACT

- 2.1 The contract between the Customer and DX comprises the service agreement setting out the commercial terms (“Service Agreement”), these Conditions, the relevant service guide published on DX’s website from time to time (“Service Guide”) and any other documents referred to in any of them (the “Contract”). The Contract is formed when the Service Agreement is signed by both parties’ authorised representatives and shall come into force on the start date identified in the Service Agreement. DX is not a common carrier and accepts Packages and Consignments only on the terms of the Contract to the exclusion of any terms issued by the Customer.
- 2.2 DX is not a common carrier. DX accepts Packages on the terms of the Contract to the exclusion of any terms issued by the Customer.

3. CUSTOMER’S OBLIGATIONS

- 3.1 The Customer must ensure that: (i) each Package or Consignment complies with the requirements and traffic profile set out in the Service Agreement and the Service Guide; (ii) no Package contains excluded goods as defined on DX’s website (“Excluded Goods”) except as expressly agreed by DX; (iii) all items are packaged and labelled in accordance with DX’s packaging requirements set out in its Service Guide; (iv) each Package or Consignment has a complete, accurate address and postcode; (v) accurate weights are provided with each Package or Consignment; (vi) the Customer’s obligations in the Service Guide are met; (vii) all Packages are ready for collection by DX at the applicable collection time and loaded by any applicable vehicle departure time; and (viii) it owns each Package or is authorised by its owner to send it in accordance with the Contract.

4. THE SERVICES

- 4.1 DX shall use reasonable endeavours to provide the carriage Services described in the Service Agreement in accordance with the Service Guide, including in relation to delivery timescales. Time shall not be of the essence of any aspect of DX’s performance. Unless otherwise provided, delivery times refer to working days and exclude Sundays, bank holidays, public holidays and local holidays.
- 4.2 DX may refuse to accept any Packages, including any that are not securely or adequately packaged. DX may open, inspect, and/or refuse to carry any item that it believes may comprise non approved Excluded Goods. DX shall not be responsible for any delay arising as a result. If such items: (i) comprise those Excluded Goods, then the Customer shall collect them from DX within a reasonable time; (ii) do not comprise those Excluded Goods, DX shall repack them and deliver the same at the earliest available opportunity. Additional charges may apply.
- 4.3 Risk in each Package shall pass to DX when its barcode is first scanned by DX or an authorised DX representative signs a manifest relating to that Package. DX shall not be required to check the contents of any sacks, crates or cages containing Packages at the time of collection.
- 4.4 Subject to clause 5.1, delivery shall be deemed complete upon unloading at the delivery address or, in the case of residential addresses, at a neighbouring premises.
- 4.5 If required by law, DX may pass any Packages to the relevant authorities without notice.
- 4.6 DX may provide equipment to the Customer for use in connection with the Services (such as printers or scanners) subject to additional hire terms. Title to any other property issued by DX to the Customer (such as sacks, labels or pallets) shall unless otherwise agreed remain with DX at all times. The Customer shall keep it in good

condition and return it to DX on request.

5. UNDELIVERED PACKAGES

- 5.1 If DX has attempted to deliver a Package or Consignment but failed to deliver it due to (i) the Recipient’s refusal or failure to take delivery; (ii) the Recipient’s unavailability or absence; (iii) failure by the Customer to provide an accurate address and postcode; or (iv) any Force Majeure Event, then DX shall be deemed to have completed delivery for the purposes of measuring DX’s performance against the service timescales in the Service Guide.
- 5.2 DX shall attempt redelivery in accordance with the Service Guide and if not possible may dispose of the Package or Consignment in accordance with the Service Guide.

6. CHARGES & PAYMENT

- 6.1 The charges payable by the Customer for the Services shall be based on the tariff set out in the Service Agreement. The tariff is based on the account profile including projected use set out in the Service Agreement. All charges and supplements are subject to VAT.
- 6.2 The Customer shall maintain its projected use as set out in the Service Agreement. DX shall review volumes despatched against the projected use (measured over successive three-month periods) and if the volumes despatched are less than ninety per cent (90%) of projected volumes, then DX may revise its tariff to reflect the volumes despatched as against the volumes anticipated by the original tariff, and may retrospectively charge the difference for the relevant period.
- 6.3 DX may vary the tariff by written notice at any time for any reason including: (i) with retrospective and prospective effect, if the Customer’s use of the Services materially differs from the traffic profile; and/or (ii) if DX’s costs of providing the Services have increased.
- 6.4 DX may charge supplements as described in the Service Guide or Service Agreement including a fuel supplement in accordance with the fuel index published on DX’s website.
- 6.5 Without limiting clause 6.3, DX shall conduct an RPI-based review of the tariff annually on or around the anniversary of the Contract.
- 6.6 DX may recover from the Customer any sums paid out by DX as duty or tax on any Package.
- 6.7 Unless otherwise provided in the Service Agreement, DX will invoice the Customer weekly in arrears and may charge a minimum weekly invoice charge of £100.
- 6.8 The Customer shall make all payments due to DX in pounds sterling by Direct Debit to DX’s nominated bank account within fourteen (14) days after the date of invoice.
- 6.9 Any query relating to any invoice must be notified to DX’s Credit Control within seven (7) days of the date of invoice.
- 6.10 The Customer may not withhold payment of any amount due to DX by way of set-off or counterclaim. DX may set off any amount owing to it from the Customer against any amount owed by DX to the Customer.
- 6.11 If the Customer fails to pay any amount due to DX by the due date then without limiting DX’s other rights and remedies: (i) DX may claim interest and costs under the Late Interest under the Late Payment of Commercial Debts (Interest) Act 1998; (ii) DX may suspend performance of the Services until it is paid; and (iii) DX may exercise a general right of lien and hold any Packages until all outstanding sums are paid. If any sums are not paid within fourteen (14) days after their due date then DX may without further notice to the Customer sell any Packages and apply the proceeds against the sums due. Any surplus after satisfaction of all sums and DX’s reasonable costs shall be repayable to the Customer on demand.
- 6.12 DX may at any time by written notice withdraw or alter any credit allowed to the Customer.

DX shall not be liable for any loss of or damage to any Package unless the Customer follows DX’s applicable claims procedure and the provisions of this clause 7.

Where the Customer intends to make a claim in respect of loss or damage in respect of a Package, the Customer must notify DX promptly and in any event: (i) within seven (7) days from the date of transit in the case of claims for damage; or (ii) within twenty-one (21) days from the date of transit in the case of

claims for loss, and the Customer must provide the detailed claim, together with any supporting documentation, within a further fourteen (14) days after such notification.

DX shall charge a £25 excess fee on each claim payable by DX which shall be non-negotiable.

The Customer shall in the case of damage claims make the damaged Package available for inspection by DX or its agents within seven (7) days after DX’s written request.

If in connection with any damage claim DX makes any payment or credit to the Customer, DX may dispose of the Package as DX sees fit.

8. LIMITATIONS OF LIABILITY

- 8.1 Without limiting clause 7 or the rest of this clause 8, DX’s liability arising in connection with any damage to or loss of any Package or Consignment shall not exceed the lower of: (i) the applicable per-Package compensation limit described in the Service Agreement or Service Guide; or (ii) the manufacturing costs; or (iii) the costs of repair. In the absence of evidence, DX may estimate costs by deducting forty per cent (40%) from the sales value. DX will not be liable for the first £25 of any claim for loss or damage to any Package or Consignment.
- 8.2 DX shall not be liable for any non-performance, or for loss or damage to any Package, if: (i) arising wholly or partly from any breach of the Contract, act or omission of the Customer or Recipient; (ii) caused by inherent wastage or defects, or natural deterioration in the Package; (iii) arising during loading, or unloading or moving other than at the agreed delivery point; (iv) the Package contains non-approved Excluded Goods; (v) a delivery note has been signed for by the Recipient; (vi) the Recipient fails to accept delivery; (vii) the Consignment is correctly delivered to the delivery address and a person misrepresents their authority to receive it; (viii) a delivery note has been signed for by a neighbour as specified in the DX Express service variants (ix) the Package is lost but is subsequently found and returned; or (x) the damage is not evidenced by crushing, piercing, water damage or other damage to outer packaging visible to the naked eye.
- 8.3 DX will use reasonable endeavours to meet the timings described in the Service Description but will not be liable for any delays in delivery.
- 8.4 DX shall not be liable to the Customer if DX is prevented or delayed from performing the Services by a circumstance beyond DX’s control (a “Force Majeure Event”), including adverse weather conditions, industrial disputes, accidents, obstruction of highways, mechanical breakdown or traffic congestion. If a Force Majeure Event occurs DX may: (i) suspend performance of the Services for its duration; and/or (ii) return to the Customer any Package or Consignment in the possession of DX without limiting the Customer’s obligation to make payment of any charges.
- 8.5 DX shall not be liable for any: (i) loss, damage, costs or expenses incurred by the Customer as a result of third party claims; (ii) data loss or corruption; (iii) loss of profits, income or business opportunity; (iv) loss of anticipated savings; (v) injury to reputation or goodwill; (vi) loss of production; or (vii) indirect or consequential loss, damage, costs or expenses.
- 8.6 DX’s total aggregate liability during any period of twelve (12) months beginning on the start date or anniversary of the Contract shall not exceed the lower of: (i) thirty thousand pounds (£30,000); or (ii) if the Customer’s annual charges are less than thirty thousand pounds (£30,000), ten per cent (10%) of annual charges.
- 8.7 Nothing in the Contract shall operate to limit or exclude DX’s liability for any matter for which liability cannot lawfully be limited or excluded. References to DX’s liability are to liability under or in connection with the Contract, whether in contract, tort (including negligence or breach of statutory duty) or otherwise.

9. INDEMNITIES

The Customer shall indemnify DX against any and all loss, damages, costs, and expenses which DX incurs arising from: (i) the acts or omissions of any Recipient; or (ii) claims made against DX in relation to any Package or Consignment by any third party.

10. TERM AND TERMINATION

10.1 DX may terminate the Contract and/or suspend performance of the Services if the Customer: (i) is in material breach of any obligation under the Contract and fails to remedy such breach (if

capable of remedy) within fourteen (14) days after receiving notice of it; or (ii) becomes insolvent, resolves to wind up, makes an arrangement with its creditors, goes into administration or receivership or suffers or takes any similar occurrence or action, or is subject to any petition, application or order for any such occurrence or action; or (iii) does not accept any variations proposed under clause 12.8.

10.2 Either party may terminate the Contract by three (3) months’ written notice, provided that such notice may not be effective any earlier than the end of the minimum term specified in the Service Agreement. During such notice period, the Customer shall maintain projected volumes, and DX shall be entitled to levy charges in accordance with clause 6.2 if the Customer fails to do so.

10.3 After termination, DX may invoice any charges and surcharges not previously invoiced, and any sums invoiced shall become immediately due.

11. DATA PROTECTION

11.1 The Customer provides Personal Data (as defined in the Data Protection Act 1998, as amended or replaced by General Data Protection Regulation 2016 and the Data Protection Act 2018 (“Data Protection Law”)) of Recipient and other individuals to the DX in order for DX to provide the Services. For the purpose of this clause “Data Processor”, “Data Controller” and “Personal Data” shall have the same meaning as defined in Annex 1 – Data Protection which forms part of this Contract and can be accessed on our website at: www.dxdelivery.com/legal. DX shall be a Data Processor and the Customer shall be a Data Controller. Each party shall agree to a further data protection agreement if required.

11.2 In relation to any Personal Data provided by the Customer to DX: (i) The Customer agrees to comply with its obligations as a Data Controller under Data Protection Law; (ii) The Customer has obtained any necessary consents from the Recipient of the Package and/or Consignment as required under the Data Protection Law for use of that Personal Data by DX to provide the Services; and (iii) The Customer has made the Recipient aware that such details may be used by DX to enhance the delivery process for the Recipient and DX will use notifications for that purpose.

11.3 DX may share the personal data with its third party sub-processors for the purpose of providing or improving the Services in accordance with Annex 1 – Data Protection.

11.4 DX shall not be considered a Data Controller or Data Processor for any personal and/or sensitive data that is contained within the Package and/or Consignment.

12. GENERAL

12.1 DX may sub-contract its performance.

12.2 The Customer may not assign any part of the Contract without DX’s prior written consent.

12.3 Any notice in connection with the Contract must be in writing (including email) and sent using the contact information in the Service Agreement.

12.4 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, it shall be severed and the others shall remain in effect.

12.5 Each member of the DX Group and its contractors shall have the benefit of and may enforce the limitations and exclusions of liability in these Conditions. Otherwise, no third party may enforce any term of the Contract. The parties shall not require any third party’s consent to vary the Contract.

12.6 The Contract is the entire agreement between the parties and supersedes all previous agreements. In entering into the Contract the Customer does not rely on any representations not set out in the Contract.

12.7 A waiver of any right or remedy under the Contract is only effective if in writing, and shall not affect any other right or remedy.

12.8 Except as otherwise provided in the Contract, the Contract may only be varied by the parties’ written agreement. DX may vary these Conditions unilaterally by one (1) month’s written notice, provided that no variation shall be effective if the Customer notifies DX within that notice period that it does not accept it.

12.9 The Contract and any dispute arising in connection with it shall be governed by and construed in accordance with the law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.